IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Janak Soni Vs. State of Rajasthan

S.B. CRIMINAL APPEAL NO. 221/2001 against the judgment and Order dated 09.4.2001 passed by Additional Sessions Judge, No.3, Jodhpur in Sessions Case No. 40/2000.

Date of Judgment : 26/05/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta for the appellant.
Mr. J.P.S.Choudhary, P.P. for the State.
Mr. Shankar Rajpurohit on behalf of Mr. Sunil Beniwal for the complainant.

BY THE COURT:-

The matter has come up for orders on S.B.Criminal Misc. Application No. 281/06 filed by the appellant under Section 482 Cr.P.C., seeking stay of conviction.

Learned counsel for the parties jointly submit that the complainant has compromised the matter with the appellant and a compromise has also been filed by complainant Ritesh Harsh PW-13 before the Deputy Registrar, Judicial of this Court which has been verified and therefore, the appeal as such may

be finally heard and decided.

With the consent of learned counsel for the parties, the appeal itself is finally heard.

By the instant criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter), appellant Janak Soni has assailed the judgment and order dated 9.4.2001 passed by Additional Sessions Judge, No.3, Jodhpur (for short 'the trial court' hereinafter) in Sessions Case No. 40/2000, whereby the trial court convicted the appellant for the offences under Sections 307, 324 and 341 IPC and sentenced him as under :-

(i) Under Section 307 IPC : three years' rigorous imprisonment and a fine of Rs.5000/-, in default of payment of fine further to undergo one months' simple imprisonment;

(ii)Under Section 324 IPC : one year's rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine further to undergo one month's simple imprisonment;

(iii) Under Section 341 IPC : one month's rigorous imprisonment.

The substantive sentences were directed to run concurrently.

Aggrieved by the judgment and order impugned, the appellant has filed the instant appeal.

I have heard learned counsel for the appellant and public prosecutor for the State as also counsel appearing for the complainant. Perused the judgment and order impugned as also record of the trial court.

It is contended by the learned counsel for the appellant that injured PW-13 Ritesh Harsh suffered simple injuries which fact has been established from the statement of PW-3 Dr. C.P.Swarnkar, PW-15 Dr. V.K.Malhotra and PW-20 Dr. S.N.Kothari. According to PW-15 and PW-20, the injuries were simple in nature by sharp and were not dangerous to life. According to the doctors, none of the injuries resulted in fracture. PW-3 Dr. C.P.Swarnkar was one of the members of the Medical Board. The Medical Board comprising of three doctors was constituted to examine the injuries suffered by the injured and according to PW-3 Dr. C.P.Swarnkar, the injuries were simple in nature and not dangerous to life. He has proved the report Ex.P/12. Learned counsel for the appellant submits that the offence wound not travel beyond Section 324 IPC for which the complainant has compromised the matter and filed a compromise which has been verified by the Deputy Registrar, Judicial. Learned counsel further submits that from the evidence, the offence beyond Section 324 IPC is not made out

being the injuries simple in nature by sharp. Neither the injuries were dangerous to life nor resulted in fracture. The occurrence took place at the spur of moment, therefore, there appears to be no intention of the appellant to cause injuries intending to commit murder.

I have carefully gone through the statement of injured PW-13 Ritesh Harsh. From his statement, it appears that the appellant, co-accused and injured were having friendly talks on a particular point and at the spur of moment, it is alleged that the appellant, Parasram Vaishnav, Brijesh Sharma, Chandra Singh, Virendra Singh and Tribhuvan Singh suddenly started exchanging hot talks and it is alleged that co-accused Tribhuwan Singh who has been acquitted, inflicted knife injury as also the appellant inflicted a knife injury to the injured. From the perusal of the judgment and order impugned, it appears that except the present appellant, other co-accused have already been acquitted by the trial court on the same set of evidence. On careful scrutiny of the statement of injured PW-13, it appears that the evidence against the appellant and other co-accused Tribhuwan Singh appears to be almost identical. Be that as it may. From the perusal of the statement of the injured, it no where appears that the appellant intended to cause injury with such intention or knowledge, and under such circumstances that,

if he by that act caused death, he would be guilty of murder. Keeping in view the evidence on record, more particularly the statement of injured and three doctors, in my view, it has not been established beyond reasonable doubt that the appellant caused the injuries with the intention or knowledge and under such circumstances that he by that act, death is caused, he would be guilty of murder. However, from the evidence it has been established beyond reasonable doubt that the appellant inflicted injury by knife which, on being examined by the medical jurist as also the medical board, was found to be simple in nature by sharp. Thus, the offence punishable under Section 324 IPC has been established against the appellant beyond reasonable doubt. The offence under Section 341 IPC also has been established from the statement of the injured. In this view of the matter, the trial court fell in error in convicting and sentencing the appellant for the offence under Section 307 IPC. However, the conviction of the appellant for the offences under Sections 324 and 341 IPC recorded by the trial court is justified from the evidence on record. Thus, the conviction of the appellant for the offence under Section 307 IPC cannot be sustained and is liable to be set aside.

The offence punishable under Section 324 IPC is compoundable with the permission of the Court by the person

injured and offence under Section 341 IPC is compoundable by the person who has wrongly been restrained even without permission of the Court. The complainant PW-13 Ritesh Harsh appeared before this Court and filed an application seeking permission to compound the offence as also a compromise on 14.6.2004. The compromise has been verified by the Deputy Registrar, Judicial. The complainant was identified by his counsel Mr. Sunil Beniwal. The effect of compromise under Sub-section (8) of Section 320 of the Code is that of acquittal as sub-section (8) of Section 320 of the Code provides that the composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded. Thus, the appellant deserves to be acquitted of the offences under Sections 324 and 341 IPC on having been compounded by the injured PW-13 Ritesh Harsh.

In the result, the appeal is allowed. The judgment and order impugned dated 9.4.2001 convicting and sentencing the appellant for the offence under Section 307 IPC is set aside. The conviction and sentence for the offences under Sections 324 and 341 IPC is also set aside on the offences having been compounded by complainant-injured PW-13 Ritesh Harsh. The appellant is acquitted of the charges under Sections 307, 324 and 341 IPC. The appellant is on bail. His bail bonds stand

discharged. Since the appeal itself has been decided, the application No. 281/06 seeking suspension of conviction stands disposed of.

(H.R.PANWAR),J.

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